SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com

FOUNDED 1866

BEIJING
GENEVA
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8689

WRITER'S E-MAIL ADDRESS
cshenk@sidley.com

April 11, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

RE: Nevada Bell Telephone Company, Tariff F.C.C. No. 1, Transmittal No. 39;
Pacific Bell Telephone Company, Tariff F.C.C. No. 1, Transmittal No. 110;
Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Trans. 2946.

Dear Ms. Dortch:

Attached for filing is AT&T Corp.'s ("AT&T's") Petition to Reject or Suspend and Investigate. AT&T initially attempted to file this pleading electronically at 5:13 p.m. on Friday, April 11, 2003. During the electronic filing process, a computer error occurred, making it unclear whether the filing was accepted, or whether the file was corrupted during the transfer. Accordingly, AT&T is electronically re-filing the attached Petition to Reject of Suspend. This filing is on time; it is occurring well within the time period permitted for petitions in response to the tariffs listed above. Accordingly, AT&T respectfully requests that the Commission replace the document (if any) received electronically pursuant to AT&T's earlier filing, and replace it with this document.

Respectfully submitted,

/s/ Christopher T. Shenk
Christopher T. Shenk

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
Nevada Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 39
Pacific Bell Telephone Company Tariff F.C.C. No. 1	)	Transmittal No. 110
Southwestern Bell Telephone Company Tariff F.C.C. No. 73	)	Transmittal No. 2946

AT&T PETITION TO REJECT OR SUSPEND AND INVESTIGATE

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, AT&T Corp. ("AT&T") petitions the Commission to reject or suspend and investigate the above-captioned tariff revisions filed on April 4, 2003 by Nevada Bell Telephone Company ("NBTC"), Pacific Bell Telephone Company ("PBTC") and Southwestern Bell Telephone Company ("SWBT"), collectively "SBC Companies," with an effective date of April 19, 2003.[1]

[1] Appendix A lists the tariffs that should be rejected or, in the alternative suspended and investigated. A tariff is subject to rejection when it is *prima facia* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., American Broadcasting Companies, Inc.* v. *AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI* v. *AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T (Transmittal No. 148),* Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT (Transmittal No. 2191),* 73 F.C.C.2d 709, 716, n.5 (1979) (*citing AT&T (Wide Area Telecommunications Service*), 46 F.C.C.2d 81, 86 (1974).

The SBC Companies have proposed rate increases to their month-to-month DS1 service rates of $87.2 million. *See* Exhibit A, attached. Remarkably, SBC has not made any rate reductions to offset these increases. Thus, the SBC Companies' Tariffs, if permitted to become effective, would allow them to over-recover 87.2 million from ratepayers.

The SBC Companies attempt to hide this fact by shifting demand from the higher priced month-to-month DS1 rates to the lower priced DS1 term plans. *See, e.g.,* SWBT D&J at 4 (stating that an "internal analysis was completed to determine what percentage of the month-to-month customers would choose to remain on a month-to-month basis at the increased rates or migrate to one of the DS1 term plans. Month-to-month customers were recast based on this analysis").[2] By shifting demand from the more expensive month-to-month DS1 plans to the less expensive term plans, the SBC Companies artificially reduce their revenues for the Special Access basket, thereby maintaining the Special Access Actual Price Indices ("APIs") below the Price Cap Index ("PCI") for the basket.

SBC's approach is unlawful. Carriers are not permitted to shift demand away from rate elements with proposed rate increases as a means to artificially keep the API below the PCI. If a rate increase causes a carrier's API to exceed its PCI, then the carrier must reduce its rates in the affected basket. Indeed, the Commission's rules expressly require carriers to compute the API using *base period* demand. 47 C.F.R. § 61.46(b). If the newly computed API exceeds the carrier's PCI, then it must reduce its rates so that the API is at or below the carrier's PCI. Second Report and Order, *Policy*

[2] *See also* NBTC D&J at 4; PBTC D&J at 4.

and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, ¶ 229 (1990) ("The overall rates proposed by the carriers will be deemed in compliance with the price cap only if the API is less than or equal to the PCI at all times"). Thus, the Commission's rules do not permit carriers to make changes to their base period demand to artificially gerrymander their APIs.[3] Indeed, such a rule clearly would undermine the price cap mechanism. It would allow carriers to circumvent the price cap rules by coupling rate increases with "recast" demand sufficient to maintain APIs below the PCIs, and ratepayers would foot the bill.[4]

Even assuming that it were lawful to recast base period demand (which it clearly is not), the SBC Companies' do not sufficiently document those adjustments. The price cap rules explicitly require that "[e]ach price cap tariff filing must be accompanied

---

3 Notably, carriers' Service Band Indices ("SBIs") also must be computed using "base period demand." 47 C.F.R. § 61.47(a) (identifying SBI formula and noting that the term "i" in the formula must be computed using "base period demand"). Moreover, even to the extent that the SBC Companies' proposed tariff provisions could be interpreted as a rate "restructuring," the SBC Companies still would not be permitted to gerrymander their base period demand. The Commission's rules only permit base period demand adjustments between services of "equivalent value." 47 C.F.R. § 61.47(d). The Commission's rules therefore may permit base period demand adjustment between different term plans or between different month-to-month plans. But those rules do not permit such adjustments among term and month-to-month plans, which are not "equivalent value" plans. *Id*.

4 Exhibit B (attached) illustrates the SBC Companies' unlawful conduct. The exhibit demonstrates, using DS1 Channel Termination month-to-month rate for SWBT in Zone 1, that SWBT has eluded $5 million of rate reductions just for this rate element for this zone. The revenue for this rate element was $15 million (based on demand of 84,000 multiplied by $181). By the increasing the rate from $181 to $215 the revenue should be increased to $18 million. SWBT, however, has moved half of the demand to lower priced term plan rates that result in the value of that same demand (84,000) being $13 million. The $5 million difference between the $18 million (that should be value of this 84,000 demand at the new rate) and $13 million (which is what SWBT is showing as value of this 84,000 demand after shifting half of it to lower price term rates) is quantification of this error.

by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in 61.45, 61.46, and 61.47 as applicable."[5] As noted, however, the SBC Companies' D&Js state only that an "internal analysis was completed to determine what percentage of the month-to-month customers would choose to remain on a month-to-month basis at the increased rates or migrate to one of the new proposed DS1 [month-to-month] terms." SWBT D&J at 4. At a minimum, the SBC Companies should have provided the data, assumptions, and calculations associated with its "internal analysis" to allow the Commission or ratepayers to verify the recast demand estimates.

In fact, the demand shifted by the SBC Companies from their month-to-month DS1 services to their lower priced term plans appears to be greatly overstated. For example, SWBT recast 50% of its Channel Termination Zone 1 demand from its current month-to-month DS1 services to the lower-priced term plans.[6] As one of its largest customers, AT&T has no plans to migrate any of its PBTC, NBTC or SWBT DS1 Channel Termination month-to-month customers to these lower priced term plans where termination penalties would apply. Thus, it is unlikely that the SBC Companies' remaining customers intend to migrate from month-to-month rates to the term plans to justify the 50% industry total assumed by the SBC Companies. Of course, without any

---

[5] 47 C.F.R. § 61.49(a). Also, Section 61.49(b) explains that tariff filings must also be accompanied by supporting materials sufficient to establish compliance with the applicable bands, and to calculate affected APIs and SBIs.

[6] SWBT Trans. No. 2946, Exhibit 1 page 1 of 4; *see also* NBTC Trans. No. 39, Exhibit 1 page 1 of 4; PBTC Trans. No. 110, Exhibit 1 page 1 of 4.

supporting materials of its "internal analysis," there is no way to verify the accuracy of the SBC Companies' estimates.

CONCLUSION

For the reasons stated above, the Commission should reject or, in the alternative, suspend and investigate the above-referenced tariff filings for the full five months and impose an accounting order.

Respectfully submitted,

AT&T CORP.

By: /s/ Judy Sello

Mark C. Rosenblum
Lawrence J. Lafaro
Judy Sello
Room 3A229
One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1846 (voice)
(908) 532-1218 (fax)

David L. Lawson
Christopher T. Shenk
Sidley, Austin, Brown & Wood, L.L.P.
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Its Attorneys

April 11, 2003

CERTIFICATE OF SERVICE

I, Christopher T. Shenk, do hereby certify that on this 11th day of April, 2003, a copy of the foregoing "AT&T Petition to Reject or Suspend and Investigate" was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

A. Alex Vega
Area Manager – Tariff Administration
SBC
Four Bell Plaza
Room 1970.04
Dallas, Texas 75202
Fax No.: (214) 858-0639

/s/ Christopher T. Shenk
Christopher T. Shenk

APPENDIX A

TARIFFS WHICH THE COMMISSION SHOULD REJECT, OR IN THE ALTERNATIVE SUSPEND AND INVESTIGATE

COMPANY	TARIFF NO.	TRANSMITTAL NO.
Southwestern Bell Telephone Company	73	2946
Pacific Bell Telephone Company	1	110
Nevada Bell Telephone Company	1	39

SBC DS1 Month-to-Month Rate Increases **EXHIBIT A**

Pacific Bell Transmittal No. 110, Nevada Bell Transmittal No. 39, Southwestern Bell Transmittal No. 2946

Filed April 4, 2003

Source: Exhibit 1

		a	b	c	d=(c-b)	e=(d/b)	f=(d*a)
Zone	**Pacific Bell**	Base Period 2001 Demand	Current Rate	Proposed Rate	Difference Rate	Percent Increase	Revenue Increase
1	DS1 Channel Term	601,485	$130.00	$152.50	$22.50	17.31%	$13,533,413
1	DS1 Channel Mileage-Fixed	105,679	$48.00	$62.50	$14.50	30.21%	$1,532,346
1	DS1 Channel Mileage-per Mile	375,580	$9.00	$12.75	$3.75	41.67%	$1,408,425
1	DS1 MUX-DS1 to VG	11,187	$200.00	$275.00	$75.00	37.50%	$839,025
2	DS1 Channel Term	463,484	$141.25	$170.00	$28.75	20.35%	$13,325,165
2	DS1 Channel Mileage-Fixed	83,435	$48.00	$67.50	$19.50	40.63%	$1,626,983
2	DS1 Channel Mileage-per Mile	593,620	$9.50	$13.75	$4.25	44.74%	$2,522,885
2	DS1 MUX-DS1 to VG	5,387	$250.00	$285.00	$35.00	14.00%	$188,545
3	DS1 Channel Term	349,298	$148.00	$180.00	$32.00	21.62%	$11,177,536
3	DS1 Channel Mileage-Fixed	198,395	$48.00	$75.00	$27.00	56.25%	$5,356,665
3	DS1 Channel Mileage-per Mile	2,318,110	$10.00	$14.75	$4.75	47.50%	$11,011,023
3	DS1 MUX-DS1 to VG	3,735	$275.00	$295.00	$20.00	7.27%	$74,700
	Total						$62,596,709
	Nevada Bell	Base Period 2001 Demand	Current Rate	Proposed Rate	Difference Rate	Percent Increase	Revenue Increase
	DS1 Channel Term	39,685	$125.00	$150.00	$25.00	20.00%	$992,125
	DS1 Channel Mileage-Fixed	20,705	$54.70	$62.50	$7.80	14.26%	$161,499
	DS1 Channel Mileage-per Mile	468,613	$9.00	$12.75	$3.75	41.67%	$1,757,299
	Total						$2,910,923
Zone	**Southwestern Bell**	Base Period 2001 Demand	Current Rate	Proposed Rate	Difference Rate	Percent Increase	Revenue Increase
1	DS1 Channel Term	84,167	$181.00	$215.00	$34.00	18.78%	$2,861,678
1	DS1 Channel Mileage-Fixed	2,591	$60.00	$75.00	$15.00	25.00%	$38,865
1	DS1 Channel Mileage-per Mile	142,286	$15.50	$16.00	$0.50	3.23%	$71,143
1	DS1 MUX-DS1 to VG	517	$190.00	$275.00	$85.00	44.74%	$43,945
2	DS1 Channel Term	92,338	$183.00	$225.00	$42.00	22.95%	$3,878,196
2	DS1 Channel Mileage-Fixed	2,260	$60.00	$80.00	$20.00	33.33%	$45,200
2	DS1 Channel Mileage-per Mile	116,954	$15.50	$17.00	$1.50	9.68%	$175,431
2	DS1 MUX-DS1 to VG	3,045	$190.00	$285.00	$95.00	50.00%	$289,275
3	DS1 Channel Term	151,121	$185.00	$240.00	$55.00	29.73%	$8,311,655
3	DS1 Channel Mileage-Fixed	36,893	$60.00	$85.00	$25.00	41.67%	$922,325
3	DS1 Channel Mileage-per Mile	1,417,779	$15.50	$18.00	$2.50	16.13%	$3,544,448
3	DS1 MUX-DS1 to VG	13,713	$190.00	$300.00	$110.00	57.89%	$1,508,430
	Total						$21,690,591
Total Pacific Bell, Nevada Bell and Southwestern Bell							**$87,198,222**

EXHIBIT B

Impact of SBC Incorrectly Recasting its DS1 Month-to-Month Demand to its DS1 Term Plan Demand

DS1 Chan Term
SWBT as Filed

Current

Rate Elem	Demand	Rate	Revenue
Mo. to Mo.	84,166	$181	$15,234,046

Proposed

Rate Elem	Demand	Rate	Revenue
Mo. to Mo.	42,013	$215	$9,032,795
2yr TPP	2,108	$145	$305,660
3yr TPP	4,215	$112	$472,080
5yr TPP	35,830	$92	$3,296,360
Total	**84,166**		**$13,106,895**

DS1 Chan Term
SWBT as should have been filed (corrected)

Current

Rate Elem	Demand	Rate	Revenue
Mo. to Mo.	84,166	$181	$15,234,046

Proposed

Rate Elem	Demand	Rate	Revenue
Mo. to Mo.	**84,166**	**$215**	**$18,095,690**

As Filed Prop Revenue	$13,106,895
Corrected Prop Revenue	$18,095,690
Difference	**-$4,988,795**

NOTES: This example shows impact of demand re-cast for month-to-month DS1 Chan term Zone 1 for SWBT only. It shows how SWBT filed this tariff with demand recasted compared to how they should have filed it without demand recasted. As shown above, the result of SBC's DS1 MTM Chan Term rate increase from $181 to $215 should have resulted in proposed revenues of $18.1M. Instead, because SBC has recast a large portion of this demand to its TPP rates (primarily to the lowest priced 5yr TPP rate), SBC is only showing proposed revenues for this total demand as $13.1M. As a result, SBC has understated its proposed revenues for its DS1 MTM Chan Term rate, and not had to make the necessary rate reductions to keep its Special Access basket API below its PCI, and the affected SBIs below their SBI Upper Limits.

The DS1 Mileage and Mux rates, as well as Zone 2 and Zone 3 demand, as well as Pacific Bell and Nevada Bell have same problem.